

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

KENNETH ALAN MATTHES, #08968-003

PLAINTIFF

V.

CIVIL ACTION NO. 3:19-CV-624-KHJ-FKB

BRANDON CROWDER and UNKNOWN
OFFICERS

DEFENDANTS

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is the Report and Recommendation of United States Magistrate Judge F. Keith Ball. [25]. That Report recommends that the Court grant Defendant Brandon Crowder's Motion for Summary Judgment [21] and dismiss Plaintiff Shelby Warren's appeal without prejudice. Written objections to the Report were due by July 21, 2021. The Report notified the parties that failure to file written objections to the findings and recommendations by that date would bar further appeal in accordance with 28 U.S.C. § 636. *Id.*

When no party has objected to a magistrate judge's report and recommendation, the Court need not review it de novo. 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). In such cases, the Court applies the "clearly erroneous, abuse of discretion and contrary to law" standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Plaintiff Kenneth Matthes brings this *Bivens* action against prison officer Crowder, alleging Crowder and other guards at the Federal Correctional Complex in Yazoo City, Mississippi, failed to protect Matthes from harm when he was attacked by other inmates. Matthes, however, did not allege he exhausted his administrative remedies or could not pursue these remedies. Crowder submitted evidence showing Matthes never filed an administrative remedy request on this incident. [21-1]; [21-2]. As a result, the Magistrate Judge found that Matthes had not exhausted his administrative remedies as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a) (Supp. 2000), and recommended that the Court should dismiss this case without prejudice. Matthes did not object to this Report and Recommendation. The Court finds that the Report and Recommendation is neither clearly erroneous nor contrary to law and should be adopted as the opinion of this Court.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Report and Recommendation [25] of United States Magistrate Judge F. Keith Ball, entered in this cause should be, and the same is, adopted as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that Defendant Crowder's Motion for Summary Judgment [21] is granted, and this case is DISMISSED WITHOUT PREJUDICE.

A separate Final Judgment will issue this day.

SO ORDERED, this the 26th day of July, 2021.

s/ Kristi H. Johnson
UNITED STATES DISTRICT JUDGE